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March 4, 2002

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS
Mary Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: D.T.E. 01-20

Dear Ms. Cottrell:

Please accept this letter brief on behalf of XO Massachusetts, Inc. ("XO") in lieu of a more formal brief. Although there are many concerns that XO has with the UNE rates proposed by Verizon New England ("Verizon"), it will focus on only one major concern: the proposed hot cut rates.[1]

Development of local exchange competition is dependent on an effective (both technical and financial) hot cut process as customers exercise their rights to choose a carrier other than Verizon. If the Department sets the hot cut rate at $200, carriers will be at a competitive disadvantage that will retard the little progress competitors have been able to make in the Massachusetts market.

[1] XO failure to comment on any other issues in this case should not be construed as XO's agreement or acceptance of any proposed resolution of those issues.

If the Department determines that the proper cost for a hot cut is $200, it should reexamine the process used for hot cuts through its deliberations in this case or by convening a industry task force that must review the process in order to set a more reasonable cost. In a forward-looking, efficient network, it is difficult to imagine that the work to complete a hot cut would be so extensive to generate a $200 cost. Each step and action taken by Verizon should be reviewed to determine if a particular step or action is required and if there is a "smarter" way to complete the hot cut.

Recently, the New York Public Service Commission set new UNE rates. The hot cut rate was set at $185.[2] Recognizing that such a high hot cut rate would have a significant and negative impact on competition, the Commission recently ordered a $135 credit on hot cuts for two years during the term of Verizon New York's Incentive Plan.[3] This credit means that competitors will be paying $50 for hot cuts during the term of the plan.

In this case, Verizon's hot cut prices are an instance of a "price squeeze," where the monopolist establishes rates for essential facilities in a manner so that a competitor who must purchase the monopolist's facilities cannot compete with

[2] *Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements,* Case 98-C-1357, Order Issued and Effective January 28, 2002.

the monopolist's retail pricing.[4] Inevitably, a price squeeze stifles competition, and the Department should not enable Verizon to impose its anti-competitive scheme on the industry. A price squeeze occurs when a firm with monopoly power on the wholesale level engages in a price increase that drives competitors out of the retail market allowing the monopolist to extend its monopoly power to the retail market.[5]

The Department should also recognize that high hot cut prices result in CLECs competing only for the most lucrative customers to the extent that they can compete at all. With hot cut rates set so high, the only way CLECs can compete for customers is to serve those that spend the most on telecommunications services. Thus, Verizon's high hot cut prices do not serve the public interest because they would thwart competition.

XO offers no opinion on the appropriate hot cut rate in Massachusetts other than $200 is too high for it to continue to operate in Massachusetts and remain competitive. If the Department sets the hot cut rate in Massachusetts to $200 as

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[3] *Proceeding on Motion of the Commission to Consider Cost Recovery by Verizon and to Investigate the Future Regulatory Framework,* Case 00-C-1945, Order Issued and Effective February 27, 2002.
[4] *See* Sprint Communications Co. L.P. v. FCC, Nos. 01-1076, 01-1081-01-1084, 2001 WL 1657297, at *4-*5 (D.C. Cir. Dec. 28, 2001).
[5] *See* Cities of Anaheim v. FERC, 941 F.2d 1234, 1250 (D.C. Cir. 1991). The price squeeze doctrine originated in United States v. Aluminum Co. of America, 148 F.2d 416, 436-48 (2d Cir. 1945).

Verizon proposes, XO will be forced to review its plans in Massachusetts and decide whether it can afford to remain active in the Commonwealth.

The Department should reject Verizon proposed $200 hot cut rate and set a rate that is more reasonable so that competitors can continue to compete in Massachusetts.

Please file the original and eight (8) copies of this letter. Please return the additional copy to me marked “filed.” Please contact me if you have any questions or require additional information.

Sincerely,

Karen Nations

Cc: Service list (via e-mail and first class mail)

CERTIFICATE OF SERVICE

On this 4th day of March 2002, I hereby certify that copies of the foregoing Letter Brief of XO Massachusetts, Inc., to Mary L. Cottrell, Secretary, Department of Telecommunications & Energy filed in Docket D.T.E. 01-20 was sent via e-mail and Federal Express to the Department and by e-mail and first class mail to all other Parties.

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Karen Nations